

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

DECISION OF THE BOARD

In the Matter of the Petition for Redetermination of INFORMATION SATELLITE
CORP., ET AL dba SATELLITE BUSINESS SYSTEMS *Petitioner*

Appearances:

For Petitioner:

Harold J. Heltzer
Attorney

*For Department of Special
Taxes and Operations, State
Board of Equalization:*

Stella Connell Levy
Tax Counsel

This Decision considers the merits of a petition for redetermination, filed pursuant to Revenue and Taxation Code Sections 41085 and 44080, of assessments of the Emergency Telephone Users Surcharge (“9-1-1 Surcharge”) and the California Universal Telephone Services Act Tax (“Moore Act Tax”), in the amount of, respectively, \$3,552.95 and \$47,496.90, for the period October 1, 1984 to February 28, 1986. The Board heard the petitions for redetermination on October 2, 1992, in Sacramento, California. The board took the matter under submission, and, on April 22, 1993, ordered the matter redetermined without adjustment.

The issue before us is whether California Public Utility Commission (P.U.C.) fees and Moore Act taxes billed and collected by petitioner are “taxes” which can be excluded from the amounts upon which the Moore Act tax and 9-1-1 Surcharge are based. We hold that they are not.

Petitioner was engaged in providing microwave satellite communications to business and residential customers throughout the United States. Upon audit, it was discovered that petitioner had not included within the amount subject to the 9-1-1 Surcharge charges collected from its customers as reimbursement for the P.U.C. fees and for the Moore Act tax. Petitioner argues that the charges are state “taxes” excluded from the computation of the 9-1-1 Surcharge by Section 41011 and from the definition of “gross revenues” for Moore Act tax purposes pursuant to Section 44024. In making its argument, petitioner relies on the failure of the Legislature explicitly to limit the exclusion to taxes which are imposed not on the taxpayer but on the taxpayer’s customers.

We find Petitioner’s argument would lead to an absurd result. We can see no difference between passing on to its customers the taxes and fees that Petitioner pays to the state for P.U.C. fees and Moore Act taxes and passing on the costs of its franchise and

property taxes. Such ordinary expenses of doing business, however, were clearly not intended to be deducted from the 9-1-1 and Moore Act tax base, and charges intended to recoup those expenses are not, strictly speaking, “taxes”.

Statutory exclusions from taxation are to be strictly construed. *Framingham Acceptance Corp. v. State Board of Equalization* (1987) 191 Cal.App.3d 461. We note that the tax exclusion in the 9-1-1 Surcharge Act specifies only taxes imposed by the United States and “any charter city” (Section 41011) and does not even mention “state” taxes. Even where the Legislature has included “state” taxes in the exclusion, however, as in the Moore Act (Section 44024) we find that the only reasonable construction of the statute would restrict the exclusion to taxes imposed on the **customer**, where the taxpayer’s charges truly function as a collection mechanism for the government, rendering the charges “taxes”.

For the reasons set forth in this Decision, the petition for redetermination is denied.

Adopted at Torrance, California, this 9th day of November, 1993.

Brad Sherman, Chairman

Windie Scott, Member

Attested by: Burton W. Oliver, Executive Director